IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Suresh Chandra alias Bharu Lal. Versus Smt. Deepaka.

S.B. Criminal Revision No. 638/2002 against the order dated 4-7-2002 passed by the Family Court, Udaipur, in Criminal Case No.293/2000.

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Date of Order: July 12, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Sudhir Saruparia, for the petitioner.

BY THE COURT:

By the instant criminal revision petition under Section 397/401 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) the petitioner has assailed the ex-parte order dated 4.7.2002 passed by the Family Court, Udaipur (for short, "the trial Court" hereinafter) in Criminal Case No. 293/2000, whereby the trial Court granted maintenance in favour of the non-petitioner @ Rs.700/- per month with effect from 5-5-2000. Aggrieved by the order impugned, the petitioner has filed the instant criminal revision.

I have heard learned counsel for the petitioner. Perused the order impugned as also the record of the trial Court.

It is contended by the learned counsel for the petitioner that on 4-1-2002, the petitioner failed to appear before the trial Court and, therefore, ex parte proceedings were taken against him. The petitioner moved an application for setting aside the ex-parte order on 21-8-2002. However, the petitioner again failed to appear before the trial Court and the trial Court dismissed the application filed by the petitioner seeking setting aside the ex parte order.

It is contended by the learned counsel for the petitioner that the petitioner sent a telegram showing his inability to appear before the trial Court, which, according to the record, was received much after passing the order dated 3.7.2002.

From the record, it appears that on earlier occasions also, the petitioner sent telegrams and did not appear before the trial Court. From the record, it also appears that the application filed by the non-petitioner under Section 125 of the Code remained uncontroverted as the petitioner did not file any reply thereto. The non-petitioner herself appeared as AW 1 and also produced AW 2 Kailash Chandra. From the perusal of statements of these two witnesses, the non-petitioner has established that the petitioner, despite having sufficient means, failed to maintain and neglected the non-petitioner. The trial Court, on appreciation of the evidence, came to the conclusion

that the petitioner is having sufficient means and despite having sufficient means, he failed to pay maintenance to the non-petitioner and neglected her and consequently awarded maintenance @ Rs.700/- per month.

On close scrutiny of the record, in my view, the conclusion arrived at by the trial Court cannot be said to be erroneous, illegal or perverse. From the record, it is evident that despite notice, the petitioner had hardly cared and did not appear and contest the case. In the circumstances, therefore, the impugned order does not call for any interference.

The criminal revision is dismissed. The stay petition also stands dismissed.

(H.R. PANWAR), J.

mcs